

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN ASSEMBLY JULY 24, 2003

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 22, 2003

AMENDED IN SENATE APRIL 21, 2003

AMENDED IN SENATE MARCH 28, 2003

SENATE BILL

No. 543

Introduced by Senator Machado

February 20, 2003

An act to add Chapter 1.5 (commencing with Section 1249) to Part 2 of Division 2 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 543, as amended, Machado. Water rights: groundwater cleanup operations.

Existing law authorizes the State Water Resources Control Board to grant permits and licenses to appropriate water in accordance with certain procedures. Existing law authorizes various public agencies to order a person who has contaminated water to clean up the water or to take other remedial action.

This bill would permit the water produced from a groundwater cleanup operation to be used, transferred, assigned, or conveyed for beneficial use by the operator of that operation only if a written agreement for the allocation of treated water has been entered into between the operator and every injured public water system that has given notice to the operator of its claim that it is an injured public water

system, as defined, or other requirements are met. The bill would provide that no right shall vest in the operator solely by virtue of its extraction, treatment, and discharge of water from that operation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 1249) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 1.5. GROUNDWATER SUBJECT TO A CLEANUP
OPERATION

1249. The water produced from a groundwater cleanup operation may only be used by the operator of the groundwater cleanup operation, or transferred, assigned, or conveyed by that operator, for beneficial use if one of the following applies:

(a) A written agreement for the allocation of treated water has been entered into between the operator and every injured public water system that has given notice to the operator of its claim that it is an injured public water system.

(b) The operator has provided notice of its readiness to transfer, assign, or convey available treated water as ~~replacement water~~ *a replacement water supply* to injured public water systems who elect to participate within 90 days of receiving notice. For the purposes of this subdivision, that notice shall include a statement that the operator is ready to transfer, assign, or convey that water on a prorated basis if the quantity of that water is insufficient to meet all demands for treated water.

(c) *(1)* The operator has transferred, assigned, or conveyed the ~~treated water to a court appointed watermaster, a county water agency, or a groundwater management agency established by general law or a joint powers authority that has, prior to January 1, 2004, adopted a basinwide management plan or other integrated regional water management program or plan in accordance with Section 10753 or paragraph (1) or (2) of subdivision (c) of Section 10540, in a manner that meets both of the following requirements:~~

~~(1) treated water to one of the following:~~

(A) A court appointed watermaster.

1 (B) A county water agency.

2 (C) (i) Either a groundwater management agency established
3 under Chapter 1023 of the Statutes of 1982 or Chapter 750 of the
4 Statutes of 1991 that has the power to regulate the production of
5 groundwater and manage groundwater quality or a joint powers
6 authority.

7 (ii) The groundwater management agency or the joint powers
8 authority described in clause (i), prior to January 1, 2004, shall
9 have adopted a basinwide management plan or other integrated
10 regional water management program or plan in accordance with
11 Section 10753.7 or paragraph (1) or (2) of subdivision (c) of
12 Section 10540.

13 (2) This subdivision applies only if both of the following
14 requirements are met:

15 (A) The treated water is dedicated for recovery and use by all
16 injured public water systems.

17 ~~(2)~~

18 (B) The treated water is made available to each injured public
19 water system and, if necessary, prorated among them, as a
20 replacement water supply.

21 (d) A replacement water supply, which may include the treated
22 water or remediation of the contaminated drinking water supply,
23 or full financial compensation instead of a replacement water
24 supply, has been provided to all injured public water systems, or
25 a written agreement has been executed to provide a replacement
26 water supply, or full financial compensation instead of a
27 replacement water supply, to all injured public water systems, in
28 an amount that is sufficient to satisfy all demands for replacement
29 water supplies.

30 1249.1. The benefits of Section 1010 shall apply to the use of
31 treated water or water from any source that is used as a replacement
32 water supply by any injured public water system.

33 1249.2. Notwithstanding any other provision of law, no right
34 shall vest in the operator of a groundwater cleanup operation solely
35 by virtue of its extraction, treatment, and discharge of water from
36 the groundwater cleanup operation.

37 1249.3. (a) The definitions set forth in this section govern the
38 construction of this chapter.

39 (b) “Groundwater cleanup operation” means any operation or
40 program designed or implemented to remediate or abate

1 groundwater contamination pursuant to an approved work plan or
2 order issued by a federal agency or a state agency, including a
3 regional board, for the cleanup or remediation of contaminated
4 groundwater.

5 (c) (1) Subject to paragraph (2), “operator” means any person
6 or entity engaged in a groundwater cleanup operation or agent of
7 that person or entity designated by that operator for that purpose.

8 (2) “Operator” only means a person or public entity that has
9 been determined by a state agency, federal agency, or a court of
10 competent jurisdiction to be responsible or potentially responsible
11 for all or part of the groundwater contamination, but does not
12 include a public water system for which any of the following
13 applies:

14 (A) Has been identified by a state agency, federal agency, or a
15 court of competent jurisdiction as a responsible or potentially
16 responsible party as a result of its ownership or operation of a well
17 or its production of groundwater for distribution to its customers.

18 (B) Is using the treated water it produces for the benefit of
19 serving its customers.

20 (C) Is designated by a state agency or federal agency to
21 administer the cleanup operation or facilities.

22 (D) Is the only injured public water system beneficially using
23 the treated water it produces for the sole benefit of its customers.

24 (d) “Prorated” means the allocation of treated water among
25 participating demands according to the percentage of demand each
26 injured public water system holds in relation to total demands for
27 treated water.

28 (e) “Injured public water system” means a public water system
29 as defined in subdivision (h) of Section 116275 of the Health and
30 Safety Code that produces groundwater from that portion of the
31 groundwater basin that is the subject of the remediation by the
32 operator of a groundwater cleanup operation.

33 (f) “Replacement water supply” means a water supply
34 delivered as a substitute for the contaminated groundwater supply
35 that meets all of the following requirements:

36 (1) Has the same reliability as the water pumped by the public
37 water system on a 24-hour average.

38 (2) Equals the volume of water pumped by the public water
39 system on a 24-hour average, including that amount of water



1 required for “peaking,” fire flow pipeline distribution capacity,
2 and any stored surplus supplies.

3 (3) Has the same or comparable water pressure that existed
4 prior to the contamination of the groundwater supply.

5 (4) Has the same, comparable, or better water quality than that
6 pumped by the public water system prior to the contamination of
7 the groundwater supply.

8 (5) The cost of the water is the same or comparable to that of
9 the water pumped by the public water system prior to the
10 contamination of the groundwater supply.

11 (g) “Work plan” means a schedule of actions to cleanup or
12 remediate contaminated groundwater, which has been approved
13 by a state agency or federal agency, for the purposes of the cleanup
14 and remediation of contaminated groundwater.

15 (h) “Notice” means notice undertaken by certified mail to the
16 official business address of each public water system, return
17 receipt requested.

18 (i) “Demands for treated water” means the total amount of
19 water that is not available to all injured public water systems as
20 calculated by the operator annually commencing on the date of the
21 first notice of the availability of treated water due to either of the
22 following:

23 (1) The injured public water system has determined on the basis
24 of sampling undertaken pursuant to Chapter 15 (commencing with
25 Section 66265.1) of Division 4 of Title 22 of the California Code
26 of Regulations that the water does not meet primary or secondary
27 drinking water standards or state recommended action levels for
28 public drinking water and cannot be treated to meet those
29 requirements using chlorination.

30 (2) The use of a groundwater supply could cause a migration
31 or dispersal of the contamination, *as determined by agreement*
32 *between the operator and the injured public water system, or as*
33 *provided or agreed to by a state or federal agency or court of*
34 *competent jurisdiction.*

35 (j) “Demands for replacement water supplies” means the total
36 amount of replacement water supply injured public water systems
37 are authorized to receive pursuant to an order of, or determination
38 by, a state agency, federal agency, or court of competent
39 jurisdiction.

(k) “Participating demands” means the total annual demands for treated water of all injured public water systems that elect to participate in the transfer, assignment, or conveyance of water within 90 days of receiving notice.

(l) “Treated water” means the water produced by the groundwater cleanup operation.

(m) “Comparable quality” means ~~that one of the following applies to the water~~ a water supply that meets all of the following requirements:

(1) The water meets primary and secondary drinking water standards, and state recommended action levels for public drinking water, or can be treated to meet those standards and levels using chlorination.

(2) The water meets any other applicable standard that the State Department of Health Services prescribes in a permit for a public water system.

(3) ~~The~~ *For water systems regulated by the Public Utilities Commission, the* water is determined to be of comparable quality by the Public Utilities Commission.

1249.4. This chapter does not limit the rights of any person or entity, including the operator, to beneficially use groundwater that is produced from facilities other than those used in the groundwater cleanup operation.

1249.5. (a) This chapter does not apply to the discharge of any waste stream as influent or effluent.

(b) This chapter does not prohibit the recharge, discharge, or injection of remediated groundwater into the aquifer or surface water according to the requirements of any work plan if the operator does not beneficially use, convey, transfer, or assign the treated water after it is recharged, discharged, or injected into the aquifer.

(c) This chapter does not prohibit the operation of wellhead treatment systems ~~or other groundwater cleanup operations~~ dedicated to remediating water pumped from a public water system’s well or wells, if both of the following apply:

(1) The operator does not beneficially use, convey, transfer, or assign the treated water and provides the treated water to that public water system.

(2) The operator has offered the same or comparable wellhead treatment systems or other groundwater cleanup operations to all other injured public water systems *with demands for treated water*.

1249.6. The allocation of treated water pursuant to this chapter does not affect or limit the rights or remedies that are available under any other law to an injured public water system.

1249.7. This chapter does not establish, determine, or abrogate a standard for source water, receiving waters, or other state water quality standards of any kind.

1249.8. This chapter does not alter or modify any order or requirement of any federal official or state official or agency acting as a natural resource trustee, under applicable federal or state law, as it relates to the use of replacement water when used to restore damage to natural resources or to mitigate damage to natural resources.

1249.9. This chapter does not expand the powers of a court appointed watermaster, a county water agency, a regional groundwater management agency, or a joint powers agency.

1249.10. All calculations performed by an operator under this chapter shall be subject to review by a court of competent jurisdiction upon challenge by any injured public water system.

CORRECTIONS

Text — Pages 5 and 6.